

March 6, 2003

To: Supervisor Yvonne Brathwaite Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: Pastor Herrera, Jr.
Director

Subject: **Overview of Open Video System ("OVS") Services and Opportunity for Cable Television Competition in Designated Unincorporated County Areas**

Background

In June of 2002, I sent a memorandum to your offices informing you that the Department of Consumer Affairs (the "Department") along with County Counsel was negotiating an agreement to bring competition for cable services to the Altadena, Chapman Woods, Kinneloa, La Crescenta, Montrose and South Monrovia unincorporated areas. This was the result of Altrio Communications, Inc. ("Altrio") having submitted an application to the County to construct, operate and maintain an "Open Video System" ("OVS")¹ in designated areas of the unincorporated County. The Department, County Counsel and Altrio have recently reached agreement on the terms for this OVS Agreement.

The proposed OVS Agreement with Altrio represents the first time that a company has applied to build a system to provide video (cable television) services in direct competition with an incumbent cable system serving unincorporated Los Angeles County. Altrio currently has agreements with the cities of Los Angeles, Pasadena, Monrovia, Arcadia and Temple City to build their system and offer their services to city residents.

Federal and state laws only allow the County to regulate video services at this time. Altrio will offer a package of services including video, voice (telephone) and data (high-speed Internet). While other vendors provide some of these services, Altrio will be the first to package, or "bundle," all three of these services together on one bill.

Altrio will be operating as a competitor to Charter Communications, Inc., the incumbent

¹ "Open Video System" or "OVS" means a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service, which includes video programming and which is provided to multiple subscribers within the community, provided that the FCC has certified that such system complies with its regulations as set forth in 47 C.F.R. §76.1500 et seq.

cable television operator. The Department has negotiated an Open Video System Agreement with Altrio, which addresses the needs of residents and provides protections to the County. The Department worked closely with County Counsel, Department of Public Works, CAO's Risk Management Operations Division and the Auditor-Controller to address issues of protection to the County.

OVS Operator² vs. Cable Television Operator³

There are legal distinctions between an OVS operator and a cable television system operator. A couple of the most significant differences are the result of State and Federal law. California law requires a cable television operator who is overbuilding an existing cable television system to serve the same geographic area as the incumbent cable operator. However, an OVS provider would not be required to do so. Additionally, under Federal law, an OVS Operator is required to make up to two-thirds of its video programming capacity available for use by others. This provision is not required by cable television operators.

Key Provisions in the Agreement

- 5% of gross revenues paid quarterly to the County on video services
- Ten-year term, with an option for a five-year extension, if construction is completed within the first five years
- Security in the form of cash and a bond for performance of obligations
- Liquidated damages if Altrio fails to perform
- 10% discount on the basic tier rates for economically disadvantaged subscribers
- Public, Educational, and Government ("PEG") access support paid to the County
- One PEG Access channel dedicated for exclusive use by the County
- Up to six (6) PEG channels, in addition to the exclusive County channel
- Free basic tier video service, installation and equipment available to each County facility located in the service area
- Compliance with the County's Master Cable Television System Franchise Ordinance

Incentive for Early Completion of the OVS

It is anticipated that Altrio will begin building its system immediately upon approval and adoption of this Agreement by the Board of Supervisors. Altrio's operations involve constructing, activating and selling their services to subscribers in newly constructed areas

² "Open Video System Operator" or "OVS Operator" means any person or group of persons who provides cables services over an Open Video System and directly or through one (1) or more affiliates owns a significant interest in that Open Video System, or otherwise controls or is responsible for the management and operation of that Open Video System.

³ "Cable Television Operator" means any person or persons who, in accordance with a franchise authorized by the grantor, provides cable service over a cable system.

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to be built in phases. Therefore, subscribers in areas of the first phase will be offered services before areas of subsequent phases. Altrio has surpassed its construction schedule in the cities of Pasadena and Arcadia and is already serving subscribers in these areas.

Impact on the County

The introduction of a second video service provider will create a competitive marketplace in the County. We expect minimum disruption to County rights-of-way. The majority of Altrio's system will be placed overhead on existing utility poles in coordination with the Southern California Joint Pole Committee and the County's Department of Public Works. Where utilities have been placed underground, Altrio will install its system underground. Altrio has agreed to work with the County and its residents to coordinate siting, choice of equipment housing materials, landscaping for above-ground pedestals, and to provide routine maintenance, emergency repairs and graffiti removal.

Public Comment

On February 19, 2003 and March 5, 2003 this matter went before the Business License Commission ("BLC"). Notices of the public hearing were published in area newspapers and posted in County facilities in the areas designated to receive service. Within thirty (30) days the BLC will issue their recommendation to your Board to consider approval and adoption of the OVS Agreement.

DCA Recommendation

This Department is recommending approval of the Altrio OVS Agreement with the County. We believe that it is important to bring choice to consumers and foster competition in the marketplace.

We will be contacting your Deputy assigned to our Department within the next five (5) days to answer any questions that you or your staff may have. In the interim, if you have any questions, please do not hesitate to contact me at (213) 974-9750 or Fern Taylor, Chief, Telecommunications Franchising at (213) 974-2711.

- c: Each Chief Deputy
- Each DCA Board Liaison
- David E. Janssen, Chief Administrative Officer
- Lloyd W. Pellman, County Counsel
- J. Tyler McCauley, Auditor-Controller
- James A. Noyes, Director, Public Works
- Delta Uyenoyama, Chief, Risk Mgmt. Oper., CAO
- Lillian Salinger, Senior Deputy County Counsel
- Fern Taylor, Chief, Telecom. Franchising, Consumer Affairs